BANKS AND BANKING—LIABILITY OF BANK COLLECTING COMMERCIAL PAPER FOR ACTS OF CORRESPONDENT.—The plaintiff deposited for collection, four drafts with bills of lading attached, in the Wisconsin National Bank, at Milwaukee. The same were forwarded to the defendant bank, correspondent in Ashtabula, Ohio, which bank held them without demanding payment from the drawee or making any report, until the corn deteriorated in value, and the consignee then refused to accept it. The plaintiff consignor sued the negligent correspondent bank. *Held,* that the receiving bank, alone, is liable to the plaintiff for all the negligence and default of correspondent banks, since it acts as an independent contractor in making collections and is liable for the negligence of its agents. Therefore, the defendant correspondent bank cannot be sued by the plaintiff. *Taylor & Bournique Co.* v. *National Bank of Ashtabula* (D. C., N. D. Ohio, E. D. 1919), 262 Fed. 168.

The conflict still remains in the law between the so-called "New York rule" and the "Massachusetts rule" as to the liability of the receiving collecting bank for the negligence and default of its correspondent in collecting out of town collections. Under the "New York rule," the bank with which the collections are deposited is liable for the negligence or default of any agents which it may select for the purpose of collecting such items. *Commercial Bank* v. *Union Bank,* 11 N. Y. 203; *National Revere Bank* v. *National Bank of Republic,* 172 N. Y. 102; *Martin* v. *Hibernia Bank,* 127 La. 301; *Simpson* v. *Waldby,* 63 Mich. 439; *Sagerton Hdw. Co.* v. *Gammer Co.* (Tex. Civ. App.), 166 S. W. 428; *Pickney* v. *Kanawha Valley Bank,* 68 W. Va. 254; *Hoover* v. *Wise,* 91 U. S. 308; *Exchange National Bank* v. *Third National Bank,* 112 U. S. 276. The "Massachusetts rule" holds that where a collecting bank uses due care in selecting competent and worthy agents, its duty is done, and such correspondent banks become the agents of the depositor. *Fabens* v. *Mercantile Bank,* 23 Pick. (Mass.) 330; *Lord* v. *Hingham National Bank,* 186 Mass. 161; *Brown* v. *People's Savings Bank,* 59 Fla. 163; *Stacy* v. *Dane County Savings Bank,* 12 Wis. 702. For a list of states and the rule which they follow, see 5 MICH. L. REV. 109; 52 L. R. A. (N. S.) 608; 7 C. J. 606-7. In the principal case a situation arose, such that the plaintiff contended that the Wisconsin law prevailed, since the draft was deposited for collection in Wisconsin, while the defendant claimed that the Ohio law prevailed, since the collection was to take place in Ohio. Inasmuch as Ohio follows the "New York rule," *Reeves* v. *State Bank,* 8 Oh. St. 466, and Wisconsin the "Massachusetts rule," *Stacy* v. *Dane County Bank, supra,* either of the parties was entitled to judgment if his contention was correct. However, the court held that being a question of general and not local or statute law, the case would be determined by reference to all the authorities, and not by the law of the place where the contract was made or where the contract was to be performed. *Swift* v. *Tyson,* 16 Pet. 1; *B. & O. Ry.* v. *Baugh,* 149 U. S. 368. Having determined that the general law would prevail, the case, since it was in the Federal courts, was determined by the rule laid down in the Supreme Court of the United States, which is the "New York rule." *Exchange National Bank* v. *Third National Bank, supra.* Inasmuch

as there is much to be said in favor of the "New York rule," on the ground of strict agency principles, and of the "Massachusetts rule," on the ground of banking policy and general business considerations, it is doubtful if the conflict can ever be settled except by the adoption of a uniform banking statute by the various states. See also 4 MICH. L. REV. 226; 5 MICH. L. REV. 109.

BILLS AND NOTES—CERTAINTY OF PROMISE.—In an action for judgment on a promissory note it was shown that the promise was to pay "when the present indebtedness of Highland Park Co. is paid," and that such indebtedness had not been paid. *Held,* the payee could recover. *Dille* v. *Longwell* (Ia., 1920), 176 N. W. 619.

The settled rule is that a promissory note must contain an "unconditional" promise to pay. *Josselyn* v. *Lacier,* 10 Mod. 294, 317; *Carlos* v. *Fancourt,* 5 Term. R. 482, "It would perplex the commercial transactions of mankind if paper securities of this kind were issued out into the world encumbered with conditions and contingencies, and if the persons to whom they were offered in negotiation were obliged to enquire when these uncertain events would probably be reduced to a certainty. * * * The justice of the case is certainly with the (payee): but we must not transgress the legal limits of the law in order to decide according to conscience and equity." *Worden* v. *Dodge,* 4 Denio (N. Y.) 159 (promise to pay out of proceeds of ore to be mined, held a conditional promise). This common law rule of sound policy is embodied in the UNIFORM NEGOTIABLE INSTRUMENTS ACT, § 1, 2,—"must contain an unconditional promise or order to pay." In *Devine* v. *Price,* 152 N. Y. S. 321, decided after the adoption of the act, a promise to pay "when Post Office Department accepts my building" was held to be conditional. The principal case does not refer to this rule requiring an absolute promise, but avoids the rule by deciding that the particular promise was unconditional; that a promise to pay "when the thing should be done" was in fact a promise to pay "when the thing *ought* to have been done." In so interpreting the apparent condition as in fact not a condition, the court has much justification in precedent. To pay "when convenient" has been held to mean "within a reasonable time." *Jones* v. *Eisler,* 3 Kan. 134; *Benton* v. *Benton,* 78 Kan. 366; *Page* v. *Cook,* 164 Mass. 116. In *Randall* v. *Johnson,* 59 Miss. 317, a promise to pay "when a certain vessel should return" was held to mean "when she should normally have returned." The opinion cites much authority for its decision. The court was obviously influenced by the fact that the accomplishment of the condition, that is, the payment of the debts, happened to be a duty of the defendant, regardless of the note. These decisions perhaps accomplish justice between the parties, but inasmuch as they leave it quite uncertain whether a literal condition will be treated as such, or will be judicially "interpreted" as meaning something different, they quite disregard the reason for the rule, as stated in *Carlos* v. *Fancourt, supra,* that the taker of a note should be able to know at the time whether it will ever be payable.